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## Teaching First-Year Students: The Inevitability of a Political Agenda

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## Teaching First-Year Students: The Inevitability of a Political Agenda

Leon Letwin

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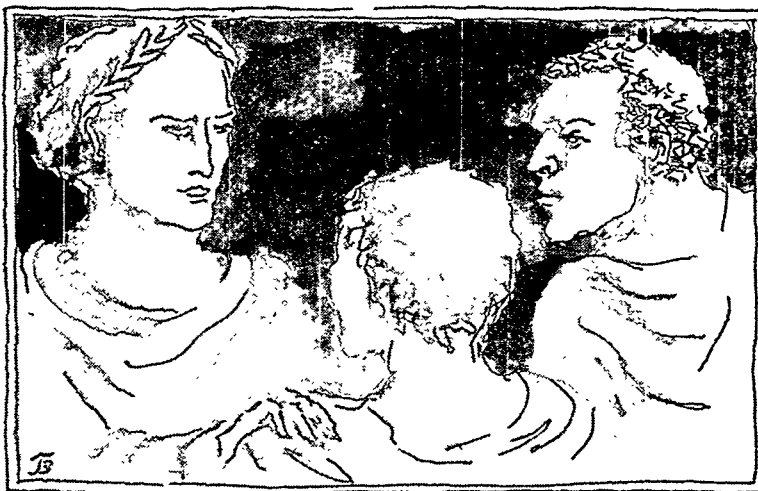
As I'm sure is true of most instructors, I have many teaching aims — some of which no doubt conflict and some of which I'm only dimly aware. But one central objective is this: I would like students (especially in their first year) to recognize that there is nothing necessarily right or inevitable about the agenda of issues presented for their consideration; and that the act of defining the issues (by myself, the casebook author, or whomever) expresses political choices as much as, or more than, the choice of solution to those issues.

I experience difficulty in achieving my goal because in large measure I am fettered by the very traditions that I want challenged. I find myself accepting, almost reflexively, the conventional definition of "the issue" and reserving my critical talents, such as they are, for the debate as to the best solution. On occasion — all too infrequently — I am able to come up with a challenge to the conventional agenda of issues myself. As a modest example, I offer the following: *Erie v. Tompkins*,<sup>1</sup> it will be recollected, is famous for its holding that federal judges in diversity cases are bound by the common law as announced by state judges. One can debate the pros and cons of this view, but the transcendent importance of the issue is widely taken for granted. Charles Wright writes, "It is impossible to overstate the importance of the *Erie* decision . . . . [I]t returns to the states a power that had for nearly a century been exercised by the federal government."<sup>2</sup> And consideration

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1. 304 U.S. 64 (1938).

2. C. WRIGHT, FEDERAL COURTS 255 (West 1976).



Class bias of judges

of the *Erie* issue occupies many pages in most civil procedure casebooks.

But a contrary and more useful perspective might be that the importance of the decision is easily overstated; that *Erie* raises a fairly trivial issue of power allocation; that the case has been exaggerated out of all proportion to its significance; and that the truly vital allocations of power run along altogether different lines than the division of power between state and federal judges to fashion common law rules. For judges, whether they be federal or state, are overwhelmingly white, upper middle-class, male and drawn from a narrow stratum of society. Now *that* is a phenomenon the importance of which it is impossible to overstate. Indeed, the important fact about *Erie* is not the *differences* between state and federal judges (so that which group gets to proclaim the common law looms as a crucial issue) but the *similarities* between the two, given the narrow social base from which they're both drawn. This doesn't answer the question whether *Erie* is right or wrong, but it does deflate the importance of the issue; and it puts in issue *which issues* ought to be the subject of intense debate.

I would be pleased if I were able to identify and challenge more frequently than I do the systematic assumptions which underlie the teaching program.

# Ruminations On Legal Education In The Next Decade

**Don Llewellyn and Richard Turkington**

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*Richard Turkington has been a professor at Villanova since 1977, having taught previously at Duke, DePaul and Southwestern Schools of Law. He teaches Constitutional Law, Conflicts of Law, Privacy and Torts and is active in civil liberties and fair employment matters. Dick suggests that the current focus on competency skills will be at the expense of theoretical or perspective courses. He advocates systematic integration of perspective materials in courses that traditionally emphasise doctrinal coverage.*

## Introduction

At the 1985 American Bar Association convention in London, Professor Aubrey Diamond of the University of London, noting the spate of literature in the United States on the role of legal education in producing competent lawyers, said that it seemed as if we “speak of little else.”<sup>1</sup> Lawyers and law teachers do, of course, talk about a lot more than lawyer competency and legal education in the well over two hundred legal periodicals that are published each year in this country.<sup>2</sup> Yet

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1. JUSTICE FOR A GENERATION (A.B.A. 1985); A. DIAMOND, LAWYER COMPETENCY AND BAR ADMISSIONS: THE ROLE OF THE LAW SCHOOL AND THE ROLE OF THE PROFESSION 156 (1985).

2. Approximately 148 of the law schools that are accredited by the A.B.A. and/or AALS publish a legal periodical. These accredited schools publish an additional 60 secondary law reviews, and 30 legal periodicals are published by non-accredited schools, making a total of 238. This figure does not include publications in other disciplines, such as philosophy and political science, that discuss law-related matters.

if an observer from another legal system were left with the impression that over the last decade legal education has myopically focused on the competency of the practicing bar and the role of law schools in lawyer competency, this would be quite understandable.

A primary focus in reforming legal education during the past few years has been on expanding the course offerings in lawyering skills. Many of these reforms can be traced to Chief Justice Burger's public and very appropriate criticism of the competency of lawyers generally, especially with respect to trial advocacy skills.<sup>3</sup>

The Chief Justice's complaints have engendered much comment, producing an interesting and thoughtful dialogue. Although there have been powerful detractors from his views, the competency-skills movement has already had a significant effect on legal education.<sup>4</sup> It has

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3. See Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential To Our System of Justice?*, 42 FORDHAM L. REV. 227 (1983). The Chief Justice's article, delivered at the Fourth Annual John F. Sonnett Memorial Lecture on Nov. 26, 1973 at Fordham Law School, is the public comment that inaugurated the skills-competency movement. The Chief Justice places a major portion of the responsibility for lack of adequate trial advocacy skills at the doorstep of legal education. He supports utilizing the third year of law school for concrete specialized training with practitioners and professional teachers. Nearly five years later, the Chief Justice reiterated his views on the dismal state of lawyer competency in a much publicized address at the Annual Meeting of the American Bar Association in New York City, (Address by Chief Justice Burger, American Bar Association Annual Meeting, New York City (Aug. 9, 1978). See generally, Cramton, *Lawyer Competence and the Law Schools*, 4 U. ARK. LITTLE ROCK L.J. 1 (1981).

4. Professor Allen has been an outspoken critic of the Chief Justice's views, (Allen, *The Causes of Popular Dissatisfaction with Legal Education*, 62 A.B.A. J. 447 (1976)). Professor Cramton has challenged the Chief Justice's generalizations about the extent of incompetency in the practicing bar and argued persuasively that lawyer incompetency is not justifiably attributed to legal education. He has conceded that the Chief Justice's views have raised important issues; in fact, Cramton served as Chairman of a task force on "Lawyer Competency: The Role of Law Schools," established by the American Bar Association on the very day that the Chief Justice leveled his most severe criticism of lawyer competency. Some indication of those effects on legal education is found in the substance of the Task Force Report. Several of the recommendations of the Task Force that appeared in its published report in 1979 directly related to emphasizing more lawyering skills experiences in law schools. The most important of these are:

#### RECOMMENDATIONS ADDRESSED TO LAW SCHOOLS

##### B. Educational Program

##### RECOMMENDATION 3

Law schools should provide instruction in those fundamental skills critical to lawyer competence. In addition to being able to analyze legal problems

expanded clinical education offerings to include a variety of intern and external programs which, in turn, have given stimulus to the adoption of other types of lawyering skills offerings.

Furthermore, the competency-skills movement is affecting the mix of legal doctrine, perspective, skills and practice courses that are offered in many law schools in this country. The inclusion of more legal writing in the first year, the addition of required and/or elective courses in the second and third year that have written work product components, and the addition of more drafting and litigation skill-type courses — through simulation and in the clinic — will necessarily produce changes in the legal doctrine and perspective course offerings.

The student/teacher ratio in the average law school is approximately 25-1. The addition of more teacher-intensive course offerings will require severe restructuring of the curriculum generally and will

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and do legal research, a competent lawyer must be able effectively to write, communicate orally, gather facts, interview, counsel, and negotiate. Certain more specialized skills are also important for many law graduates.

Law schools should provide every student at least one rigorous legal writing experience in each year of law study. They should provide all students instruction in such fundamental skills as: oral communication, interviewing, counseling, and negotiation. Law schools should also offer instruction in litigation skills to all students desiring it.

#### RECOMMENDATION 4

Law schools and law teachers should utilize small classes as opportunities for individualized instruction in fundamental lawyer skills.

#### RECOMMENDATION 5

Since lawyers today commonly work in teams or in organizations, law schools should encourage more cooperative law student work.

#### RECOMMENDATION 8

Law schools should experiment with schedules that provide opportunity for periods of intensive instruction in fundamental lawyer skills.

#### RECOMMENDATION 9

Although the law faculty must retain responsibility for course content and quality control, law schools should make more extensive instructional use of experienced and able lawyers and judges, especially in structured roles in which they utilize their professional knowledge and skill.

The Task Force then issued this caveat:

These recommendations should not be read as a call to turn law schools into trade schools. We strongly believe that the areas of program improvement recommended in this report offer as much challenge for intellectual and academic inquiry as those traditionally emphasized in law schools; and their development is important not only to the practitioner but to those who utilize legal education in various other professional roles, including teaching, business, and government.

add further cost to legal education at a time when legal education is laboring under financial constraints from several directions. Entering professors are pressing for higher salaries. Many law schools are going through the initial capitalization investment for computerizing aspects of law school administration, the law library and student services. Although tuition has continually increased over the last decade to meet these costs, government subsidies for student tuition loans have now decreased and, in turn, have affected enrollments.

Broad economic factors that affect the legal profession directly also have indirectly further taxed legal education. The profession is absorbing increasing numbers of law graduates but at a slower pace. The number of lawyers in the United States has risen from 330,000 in 1970 to 622,000 in 1983; the projected figure for 1987 is 750,000. There is now one lawyer for three hundred and seventy-five persons in the United States, compared to one for six hundred thirty-two in 1970.<sup>5</sup>

As a result of this phenomenal expansion of the bar, there are now both real and imagined concerns among students and legal educators about placement. One reflection of this concern is that in 1984 enrollment in law schools decreased in all general areas except for female<sup>6</sup> and minority students. Financial and placement pressures have pushed more of our full-time students into substantial part-time law jobs while they are attending law school. More law school resources are now utilized for placement and admissions than before.

These phenomena will likely increase in the next decade. Although the proponents of more teacher intensive and clinical kinds of experiences have recognized the need for additional resources to finance these proposals,<sup>7</sup> the overwhelming number of law schools that implement these reforms will have to do so within their own existing re-

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5. See, *THE LAWYER'S ALMANAC 1985: A CORNUCOPIA OF INFORMATION ABOUT LAW, LAWYERS AND THE PROFESSION* (1985).

6. Data available from the A.B.A. indicates that student enrollment in A.B.A. accredited schools is down in the following areas: Total Enrollment, 125,698, down from 127,195 (1.18%); Men, 77,200, down from 79,215; Men receiving J.D.'s, 72,950, down from 74,840 (2.5%); Average law school enrollment, 72,240, down from 73,523; First-year enrollment, 40,747, down from 41,159 (1.00%); J.D. enrollment 119,847, down from 121,201; Full-time enrollment, 100,931, down from 102,188; Part-time enrollment, 24,767, down from 25,007 (4%); Total "other" enrollment, 973, down from 1139.

7. See, H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 76 (1972), and, *REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: A.B.A. REPORT 22* (1979).

sources. It is within this financial context that curriculum reform must be examined, at least for most law schools.

*Legal Education, the Recent Past: Theoretical Perspectives and Legal Service*

When we entered law teaching in 1967 and 1969 respectively, the world, America and legal education were different from today. The focus of legal educators was on a different set of priorities and concerns. As we recall those expressions of concerns about deficiencies in legal education and those speculations about the future directions of legal education, they seem but whispers from a distant past when viewed from the perspective of legal education in the mid 1980's.

During the late 60's and early 70's, legal education was going through a bullish stage. Student enrollment, which began to dramatically increase in law schools in the middle 60's, continued to expand until 1981; enrollment rose from 64,406 in 1967 to 127,312 in 1983. During this period, there also occurred the enrollment of women in unprecedented numbers. As we teach today in schools where nearly 50 per cent of the students are women, it is almost impossible to imagine that in 1967, just 18 years ago, less than five per cent of the law students in the country were women. There were 47,980 female law students attending law school in 1983, compared to 2,906 in 1967.<sup>8</sup> Minority student enrollment increased dramatically, as well.<sup>9</sup> Also during the late 60's to the middle 70's the number of law teachers grew with the expanding law student population. Many law teachers were hired straight out of graduate school, without a great deal or, in some instances, any significant experience in practice.

During this period of expansion, the movement to have a significant legal service component in law schools was building momentum. Legal service clinics in law schools were established not only to provide students with experience in practical skills, but also to effect social change by providing heretofore unavailable services for the poor, both in criminal and civil matters.<sup>10</sup>

8. THE LAWYERS ALMANAC, *supra* note 5.

9. After an initial period of somewhat significant increases in minority student enrollment, there has been a leveling off and there is some question as to whether there will be future improvement in this area.

10. See, generally, Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1974). The leading impetus for clinical education with direct



The period of the late 60's to the mid 70's (when we first began to teach) was marked by the infusion of social service-oriented clinical education, as well as theoretical and legal process perspective courses.<sup>11</sup> What a difference fifteen years make! Today, speculation about the future direction of legal education has an entirely different focus. In-house legal clinics are shrinking or about to become a dinosaur of the past, to be replaced by the more economically efficient, simulated course model and by external programs. Moreover, the simulated course phenomenon is promoted exclusively for the purpose of exposing the student to practical skill experiences and, at most, only lip service is given to the role of law schools in providing services for the poor or in promoting social change through reform litigation. The demise of in-house clinics also reflects legal education's realistic assessment of the limited and shrinking job market for legal service lawyers. Although the reform movement in the late 60's and early 70's introduced some theoretical and perspective courses which have gained a firm hold in most law schools' curricula, the emphasis now is clearly away from the-

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client-student interaction during this period was the Ford Foundation which, through the Council on Education in Professional Responsibility (C.O.E.P.R.) funded the establishment of law clinics in a number of law schools. Law students were viewed as a source of inspired and cheap labor for providing services to the poor. See Monaghan, *Gideon's Army: Student Soldiers*, 45 B.V.L. REC. 445 (1965); Brown, *The Trumpet Sounds: Gideon - A First Call to the Law Schools*, 43 TEXAS L. REV. 312 (1965). Grossman includes much early criticism of the service clinic programs; see, e.g., Gorman, *Proposals for Reform of Legal Education*, 119 U. PA. L. REV. 845 (1971).

11. See, Brown, *Recent Trends in United States Legal Education*, 26 J. LEGAL EDUC. 283 (1973); H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 56 (1972) (observing that legal education was increasingly regarded as an advanced general education). Some indication of the extent to which legal educators were thinking about infusion of perspective dimensions into the students' law school experience may be surmised by the extent to which the Journal of Legal Education in 1973-74 published articles on (1) Economic Analysis and its Role in Legal Education, (2) Pharmacy and Law (3) Law and Social Work, (4) Law and Behavioral Sources Revisited, (5) Law School as a Base for Interdisciplinary Studies in a University, (6) Family Counselors of Law and Medical Students (7) Methodology for a Course on "Science," Technology and Law; (8) Military Law (9) The Relationship between Philosophy and Law (10) Science, Technology, Law (12) Simulated Game Playing in Law School (13) Simulation and Role Playing in Administrative Law (14) Thomas More and Legal Education (15) Teaching of English Legal History in America (16) Transaction Emphasis in Legal Education. See, the 1973-74 issues of the Journal of Legal Education. See also, the overall discussion in Symposium, *Legal Education*, 53 N.Y.U. L. REV. 293 (1978).

oretical and prospective offerings.<sup>12</sup>

### *The Present Challenge — Competency*

At the American Bar Association meeting this summer, when Professor Diamond made the statement that introduced this article, Professor Cramton, then president of the AALS and a frequent and leading commentator on issues in legal education, poignantly raised some questions concerning the role of legal education in developing lawyer competency. He pointed out that developing technical skills is not enough: attention must be directed to psychological factors and attitudes which play a vital role in the competent performance of lawyers. As Professor Cramton correctly observes, the difference between having the technical skills and performing as a competent lawyer is a product of personality traits such as diligence, integrity, self-image and the collective perceptions and attitudes that the individual attorney has concerning law and the role of lawyers in society.

Professor Cramton then issued the following challenge to legal educators:

[H]ow can we give . . . [law students] a positive image of themselves as professionals, as craftsmen who take pride in their work, as lawyers who always give good measure because that is the only way they can look themselves in the mirror when they get up in the morning?<sup>13</sup>

He suggested that the best way to achieve competence in the bar is to make lawyers "*care* about the wellbeing of their clients and to *care* about their image as professionals."

In this part of this article, we would like to respond to Professor Cramton's challenging question. First, we will discuss a team-teaching concept originally suggested in the Carrington Report in 1971 and presently in practice in the Graduate Tax Program at Villanova. This

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12. A recent survey of law school curricula indicates that 23 of the 146 schools that were surveyed required students to take an Enrichment/Perspective/Horizon/Humanistic/Jurisprudence/Philosophy course after the first year. Twenty-eight schools required a Clinical/Skills/Practice/Advocacy type course; one hundred and seventeen required Professional Responsibility. See, VERKUIL AND KRINSKY, A SURVEY OF REQUIRED AND ELECTED COURSES IN AMERICAN LAW SCHOOLS, presented at Deans' Workshop, A.B.A. Midwinter Meeting, 1984, on file with authors.

13. R. CRAMTON, JUSTICE FOR A GENERATION (1985).

team-teaching model is both cost effective and pedagogically sound. More importantly, it responds, at least in part, to the challenge of Professor Cramton by simply "showing the students how," exposing the students ("up-close and personal") to professionals who have a good image of themselves and care about clients. Give the students that exposure in a simulated clinical setting and, over the course of the term, those professionals will demonstrate their positive qualities, and those same qualities will be inculcated into the students. Second, we will discuss the adjustments that may have to be made with respect to doctrine and perspective courses in order to accommodate the increasing demands that the skill courses make on law school resources.

### *The Role of the Practitioner — Team Teaching*

The 1971 Carrington Report on the Curriculum Study Project Committee recommends team teaching. For example, Legal Planning, a course which is a part of the standard curriculum recommended by the Committee, is described in the report as a course which should be taught by a team including at least one practitioner engaged in legal planning.<sup>14</sup> Although some law schools may have instituted the kind of team teaching suggested in that report, it certainly has not been widely adopted.

Virtually every law school in the country uses practitioners as adjunct faculty members, but any suggestion that they should have a permanent and expanding role in the law school must be evaluated carefully. There are obvious deficiencies inherent in the use of practitioners as part-time teachers. They provide little opportunity for student access, and a demanding practice provides serious competition for their time and energy. Furthermore, it is difficult for them to develop pedagogical skills comparable to a full-time faculty member. On the other hand, the use of practitioners as adjunct instructors is economical. If a law school is in close proximity to a sizeable bar with a diversity of specialists, there is always a pool of very competent practitioners who are willing to serve as adjunct faculty members for a modest stipend. The obvious challenge is to tap this resource without compromising academic quality.

A system referred to as "modified team teaching" is in operation in the Graduate Tax Program at Villanova. Under this system, practi-

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14. PACKER & EHRLICH, *supra* note 7. No law school has instituted the curriculum recommended by the report or any curriculum which resembles it.

tioners having special skills are recruited to teach advanced courses, including clinical simulation courses, together with a full-time faculty member. The full-time faculty member's role is to serve as the educator who develops the overall structure for the course, tends to the mundane tasks of preparing a syllabus and assignments, provides access for students, and conducts examinations. The adjunct faculty member takes major responsibility for the classroom presentations, thereby freeing the full-time faculty member to play his role in other courses or other sections of the same course.

This model is ideal for professional training and resembles the models which are used in dental and medical schools. The student in this type of course is put directly in touch with the "real world" and can be exposed to the kinds of transactions that the practicing lawyer most frequently encounters and to the issues that emanate from these transactions. The Carrington Report refers to this as an effort to make students keenly aware of the interaction between legal principles and the environment in which they operate. Furthermore, the presence of a real practitioner enhances the students' experience and provides a more vivid model to emulate. At the same time, the full-time faculty member can insure that a basic foundation of legal principles will be properly developed throughout the course. One might refer to this function as developing the doctrine.



**Team teaching**

This kind of interaction between law teacher and practitioner is contemplated but not often realized in the typical external clinic. A

number of impediments inherent in the external clinic to achieving a close and meaningful contact between the practitioner and the full-time teacher are not present in the simulation exercises. In virtually all external clinics those impediments include: 1) heavy caseloads, which are frequently managed by an inexperienced practitioner (or at least not the kind of distinguished practitioner who would be invited to participate under the proposed model), and 2) a changing docket of actual client matters, which prevents prediction of the kind of issues that will arise and, thus, inhibits proper structure of the classroom component.

The full-time teacher and the practitioner should also experience professional growth from the kind of exchange contemplated in the modified team-teaching model. Those who have participated in team teaching in the Villanova Graduate Tax Program report that they have benefited from the experience. It gives the full-time teacher a real world context in which to place his knowledge of the legal doctrine, and the practitioner is required to go through the typical law school class drill, which frequently results in a useful reexamination of even the most fundamental assumptions and beliefs.

Professor Cramton would likely raise at least one concern regarding modified team teaching as a method of raising the level of the students' concern about their own image and the well-being of clients: He is very wary of the legal profession's dominant model for ethical behavior which he described as the "total commitment" model. Under this, the lawyer must do everything for the client (short of violating the law) that the client would do for himself if he had legal knowledge and skill. Our adversarial system will produce just results in the long run only if there is total commitment on behalf of each party. Professor Cramton is concerned that on some occasions this kind of zeal may have a negative effect on the pursuit of justice and the well-being of the general public. As he correctly observes, the total commitment model only serves justice when both parties, and the public as well, are protected by aggressive and competent counsel.

The practitioner's degree of commitment has not been a problem in our experience at Villanova. It is true that in the simulated cases that are used in the Graduate Tax exercises, the opposing party in virtually all cases, the IRS, is well-represented. More important, however, the practitioners selected for this role have the emotional and psychological traits which the Carrington Report regards as vital in the attainment of competence. That report states:

As an advocate, he [the effective lawyer] should be aggressive. But

his aggression should be controlled. This is especially important in negotiation or planning for the avoidance of disputes. It is important to possess a sensitivity to the consequences of stress, not only on others with whom the professional may deal, but also on himself. It is useful to understand the psychodynamics of power, especially as they operate on one's self; thus it is important to recognize the responsibility of power over others, without being infatuated by it. The model [lawyer] . . . should also feature the craftsman's sense of autonomy, which enables him to withstand criticism, to express unwelcome opinions, and to cope with conflicting claims to his loyalty. He should possess a larger-than-ordinary time perspective which enables him to sacrifice present benefits for larger future ones. He should share an interest in the general welfare; the cynical lawyer is an ugly menace, not only to others, but ultimately to himself. At the same time, he should not be so committed to his personal view of what constitutes the general welfare that he is unable to reckon with the differing views of others.<sup>15</sup>

Although there may be instances where a practitioner endowed with the character traits enumerated above, acting under the constraints of the total commitment requirements, would have a significant negative impact on the pursuit of justice or the well-being of the general public, those situations are relatively rare. If such a situation were to arise in the classroom setting, it should invite a thorough discussion of the dilemma the practicing lawyer faces. The students in a team-taught course will identify with the practitioner and, thus, be more acutely sensitive about the issue than is usually the case in classroom discussions of ethical dilemmas.

In most instances, especially in those areas which are highly regulated by complex statutory material, total commitment is the appropriate standard.

For example, assume a tax lawyer shares the present view of the Treasury that the tax incentives presently available under the Internal Revenue Code to certain corporations who establish a presence in United States possessions, such as Puerto Rico or Guam, should be restructured so that the incentives would be available only for those corporations which substantially increase employment in the region. Nevertheless, if that lawyer represents a client such as a drug company (The Treasury target) which operates totally automated facilities which can easily be established in any geographic area, the lawyer

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15. *Id.* at 104.

must inform the client of the present tax incentives and do everything possible to help the client attain them. Similarly, the tax lawyer should inform the client of the policy concerns that are presently manifested and point out that those concerns may lead to reform of the law. He should also be secure enough to tell the client that seeking such tax advantages may create public relations problems. That same lawyer should also have the autonomy and courage to engage in law reform activities and to publicly endorse proposals for equitable taxation, even though it may be opposed by his clients.

Lawyers who can demonstrate that kind of emotional balance should be recruited for a team-teaching role. That kind of lawyer will enhance competency training, and the total commitment which that lawyer has to his clients will not interfere with his contribution.

Furthermore, exposure to such competent and ethical lawyers is particularly important for today's law student. Every legal educator is aware that shrinkage in financial assistance has caused law students to seek part-time employment. In many instances, that employment is as a law clerk at a firm where the law school has no input. The experience may or may not have a positive effect in the formation of the student's character traits. Modified team teaching, on the other hand, gives the law school the opportunity to present an approved role-model to the student. In that way, any negative influence that an outside experience may have had on the working student can be neutralized. It is our view that the time has arrived for full-time teachers to work in tandem with a select group of practitioners, and that the division of labor should follow the modified team teaching model discussed above.

### *The Challenge of Teaching Perspective (or Theoretical) Courses in the 1980's and 1990's*

Earlier in this article, we speculated that the current focus on competency skills would affect the mix of doctrinal, skills, and perspective courses in the curriculum. The heaviest cost to this mix will fall, we believe, on theoretical or perspective courses, which will be reduced because of increasing pressure in law schools to enhance the student exposure to skills courses. The shifting of law faculty to skill courses, and the public posture of legal education and the Bar on the need for more practical training, will reinforce the less-than-enthusiastic attitudes that many students bring into law school about theory and may result in less enrollment in elective courses with a dominant perspective focus, and in the elimination of certain courses altogether.

We believe that the study and learning of doctrinal material is important. Students need to know and be able to employ in concrete factual situations, the basic rules, principles and concepts of several areas of law. Doctrinal studies also are, we believe, still a very effective way to develop basic analytical and case analysis skills.<sup>16</sup> Although students need to develop writing and other skills directly related to the everyday responsibility of the practitioner, such as client interviewing and counseling, negotiation, drafting, and advocacy skills, they must also be exposed to more general perspectives on law and the legal system, and to basic understandings about nonlegal disciplines that have special significance to legal policy. These disciplines would at least include economics, psychology, history, sociology, and philosophy.

For purposes of this discussion, we will use "perspective" material or courses, in a very general sense, to include both interdisciplinary courses, such as law and psychology, and classic theoretical subjects, such as jurisprudence and legal process, as well as other understandings about law, such as modes or views on the interpretation of statutes.

16. A report by a committee of the Harvard Law School faculty aptly summarizes skills that doctrinal studies effectively develop. They are:

I. *Legal Reasoning and Argument*

II. *Analysis*

A) "*common law*" *case analysis* — parsing of judicial decision (procedural posture, holding/dictum, etc.), analogy and distinction, doctrinal development.

B) *language analysis* — use and interpretation of words and phrases in rule statements; getting meaning from (or conveying it through) context, history, purpose, "structure," etc.

C) *problem analysis* — conceptualization, categorization, characterization, means-ends analysis, goal-setting, priorities feasibility, strategy.

III. *Argument, Inference, Proof*

A) *Fact determination* — what counts as "fact" in adjudicative, legislative, advisory, etc. settings; how facts are established (stipulation, judicial notice, inference from evidence, client's word, legislative investigation, presumption, etc.); reliability — needs for and cost of; introduction to pertinent psychology and epistemology.

B) *Composition of legal argument* — how conclusions are drawn out of positive law, precedent, various policy factors, "equities," style and substance; psychological considerations.

*Tentative final draft, Chapter I, THE PRESENT STATE AND FUTURE DIRECT USE OF LEGAL EDUCATION AT HARVARD: GENERAL CONSIDERATIONS, 9 (1982) in possession of authors.*



### *The Importance of Perspective (or Theoretical) Studies to the Legal Profession*

Lawyers are members of what is predominantly a public profession. The professional lives of most lawyers consist of primarily policymaking or consulting functions. At most, twenty percent of lawyers are actively involved in litigation or appellate advocacy. Lawyers predominant in elective offices at the federal level and are now becoming increasingly involved at the state and local level. For the lawyer who is or will be a policymaker in government, theoretical understandings are essential to the making of sound policy. The general structure and overview which perspective materials provide facilitate clear judgments and careful choosing between competing policies and principles. For example, a legislator or legal assistant who is contemplating legislation prohibiting conduct that his or her constituency considers immoral would benefit greatly from exposure in law school to the writings of contemporary moral philosophers<sup>17</sup> and to a thorough discussion of the concept of "victimless crimes."

Professor Feinberg, for example, has developed a way of looking at the issues and arguments that are brought to bear when the government enacts legislation that is designed to enforce the legislators' sense of moral offense in their communities. He breaks down the whole range of justification for such legislation, from enforcing morals to preventing physical harm and paternalism. He also discusses in a clear and cogent way the issues involved in weighing the conflicting principles on tough moral and social questions.<sup>18</sup> The general structures in Feinberg's article provide a way of looking at and organizing in one's mind the range of considerations that ought to go into making sound policy.

The policymaker must also have an understanding of the issues that are presented when a law defines something as criminal, i.e., prostitution or gambling, even though there is no victim in the classic sense. In considering the soundness of legislating against this kind of conduct, the cost of law enforcement, for example, is a factor that ought to be

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17. This is a term that is used to describe a group of contemporary philosophers that write about important moral and social issues, ranging from abortion to reverse discrimination, as well as more general questions such as justice. Their writings have influenced legal scholarship and other disciplines as well. Some of the best known and influential of these are Ronald Dworkin, Joel Feinberg, James W. Nickel, and John Rawls.

18. See, J. FEINBERG, *SOCIAL PHILOSOPHY* (1973).

taken into account.<sup>19</sup> Regardless of how one resolves these controversial questions, the legislative process and, ultimately, the public, benefits from a thoughtful consideration of all of the pertinent factors.

In some areas of the law, such as tax, knowledge of another discipline, economics, is essential to understanding doctrine. Federal income law, in large measure, is an assortment of economics and accounting concepts. Beyond that, tax policies are central to financial planning decisions in every facet of our economy. Those who formulate tax policy must, therefore, continually examine the economic climate. In a period such as the late 70's and early 80's, when interest rates soared, a tax system that attached no consequence to bargain interest loans simply did not contend with reality. Even a concept as fundamental as the accrual method of accounting, which permits deductions to be taken when the obligation is fixed and the amount is ascertainable, must be altered to prevent using money at the government's expense by causing the deduction to precede actual payment for a substantial period of time.<sup>20</sup>

An additional perspective can be obtained by examining the methodologies employed in other disciplines. For example, a recent article in the *Journal of Taxation* suggests using an econometric model to predict the appropriate estate plan for a married couple where state and federal taxes are interdependent and thus have a multiple looping effect which is caused by their interaction.<sup>21</sup>

Theoretical understandings also have practical value, even for the lawyer who engages in more traditional forms of professional activity. The lawyer's comprehension of such things as the nature of federalism,<sup>22</sup> the defeasibility of legal concepts,<sup>23</sup> the jurisprudential or politi-

19. The absence of a traditional victim requires that elaborate informer systems be developed to perform some of the enforcement functions of the victim, e.g., reporting that a crime has been committed and identification. In our constitutional system, informer systems may be very costly in terms of allocation of resources and other rights. The cost of enforcement may outweigh the benefits of legislation. *See generally*, H. PACKER, *THE LIMITS OF THE CRIMINAL SANCTION* 151 (1968).

20. *See* 26 U.S.C.A. § 7872 (West Supp. 1985), enacted in 1984, that tax consequences would result from a bargain interest loan. *See* 26 U.S.C.A. § 461(h) (West Supp. 1985) for the codification of the economic performance test to the time for deducting expenses. This provision was added in 1984.

21. Moore & Childs, *Econometric Model Useful in Calculating State Death Tax Effect on Marital Deduction*, 63 J. TAX'N 252 (1985).

22. *See*, for example, the interesting litigation strategy that resulted in the decision by Ralph Nader to sue General Motors in a state court in New York when other state and federal forums were available. S. SPEISER, *LAWSUIT* 31-42 (1980).

cal philosophy of a particular court,<sup>24</sup> the difference between policy and principle arguments,<sup>25</sup> and the allocation of decision making between intra-governmental institutions,<sup>26</sup> all provide valuable input for all phases of litigation decisions. Such understandings are as important to the competent, caring professional as cross examination skills.

A few elaborated illustrations will suffice to demonstrate this. In a well-noted case, consumer advocate Ralph Nader, brought suit against General Motors in a state court in New York for violation of his legal right to privacy. The state civil suit charged General Motors with (1) tapping his phones, (2) surveillance of his activities, and (3) subjecting him to repetitious anonymous phone calls and other activities. The activities alleged in the complaint occurred in Connecticut, the District of Columbia, Iowa, Massachusetts, New Hampshire and New York. Given the contacts with these jurisdictions, Ralph Nader had the option of initiating the lawsuit in either a federal district court or a state court in any one of these jurisdictions. Stewart Speiser, Ralph Nader's lawyer, has written about the strategy that went into the decision to sue in a state court in New York, even though New York did not recognize a legal right to privacy which would prohibit the alleged activities of General Motors.<sup>27</sup> Some of the factors that were considered in the decision to sue in New York were: (1) the choice of law rule of the various jurisdictions; (2) the substantive law of privacy of the various jurisdictions; (3) the tradition of jury awards in federal and state courts within jurisdictions and between different states; and (4) the availability of potentially dilatory procedural moves, such as interlocutory appeals in

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23. "Defeasibility" is a term that H.L.A. Hart used to explain an essential feature of legal concepts in his inaugural publication, H.L.A. HART, ASSUMPTION OF RESPONSIBILITY AND RIGHTS, PROCEEDINGS OF THE ARISTOTELIAN SOCIETY, New Series, XLIX (1949).

24. *Compare*, United States v. New York Telephone Co., 434 U.S. 159 (1977) with State v. Hunt, 91 N.J. 338, 450 A.2d 952 (1982).

25. The distinction is one that Ronald Dworkin has developed in his work. See, R. DWORKIN, TAKING RIGHTS SERIOUSLY 22-28 (1977).

26. Examples are as numerous as there are hard decisions in appellate court litigation. Two quickly come to mind: (1) whether to appeal a jury determination in a personal injury action on the basis that it is excessive and (2) whether to appeal a school board's decision after a hearing that there was no abuse of discretion by a principal who suspended a student.

27. S. SPEISER, *supra* note 22. Two of the counts on invasion of privacy were sustained by the New York Court of Appeals in a decision that has become important to the law of privacy generally. See generally Nader v. General Motors Corp., 25 N.Y.2d 560, 255 N.E.2d 765, 307 N.Y.S.2d 647 (1970).

state and federal courts. A general understanding of our federal system is essential to the identification and evaluation of these factors.

After Nader defeated attempts by General Motors to dismiss the privacy suit on pleadings motions in the New York courts, General Motors settled before trial for \$425,000, which at that time, 1960, was by far the largest monetary recovery ever in this type of action. Mr. Speiser's interesting account of the analysis that went into the ultimate decision of a choice of forum and other aspects of litigation strategy demonstrates how essential general *understandings* of our Federal system are to the everyday decisions of lawyers involved in litigation in which the parties have contacts with several states.

"Defeasibility" is a term that Professor H.L.A. Hart used in his inaugural publication to explain an essential feature of some legal concepts.<sup>28</sup> Hart pointed out that legal concepts, such as torts or contracts, are characterized by one feature: even though certain legal requirements have been demonstrated, liability may be defeated by demonstrating that other conditions are present. Thus, even though it has been established in a contract action that there was offer, acceptance and consideration, the claim may be defeated if there was fraudulent misrepresentation; if, in a battery action, the defendant intentionally struck the plaintiff, the tort action may still be defeated if the defendant acted in self-defense. In everyday litigation, understanding the defeasibility of legal concepts is important to the drafting of a complaint and answer, to choosing correct procedural moves, to structuring discovery, and to developing a theory of the case.

The distinction between an argument of policy and an argument of principle is one that Ronald Dworkin has developed in much of his work.<sup>29</sup> Basically, policy arguments are those that identify a goal and assess the extent to which particular action does or does not promote that goal. They are arguments determining the extent to which actions are efficient in accomplishing something in the society. Arguments of principle are those that support a particular position by invoking a proposition that is grounded in society's sense of justice and morality. The matter is, of course, much more complicated than this brief summary suggests.

Given the above, there are several practical significances to understanding the basic distinction. In countering an argument of policy there are three basic options. One is to question the importance of the

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28. H.L.A. HART, *supra* note 23.

29. R. DWORKIN, *supra* note 25.

social goal that is promoted. More likely, you would question the efficiency of a particular action as a means for accomplishing the goal. Finally, you might point to other important goals that would be frustrated by the particular action in question.

However, when you attack an argument of principle your moves are different. Arguments of principle have essential roles in litigation involving fundamental rights. Rights often "trump" government action that promotes societal goals. For example, if there was a warrantless search of homes in a residential area for evidence of a crime, it would promote the general goal of crime control but the action would be unconstitutional because of failure to conform to the probable cause and warrant requirements of the Constitution.

Partially as a result of these features of rights arguments founded on principle, much of the argument strategy in constitutional litigation evolves around "characterizing" the interest or right involved. This is because if we can persuade a court that the government action substantially interferes with "a fundamental right," then the "trumping" feature of such rights will almost invariably override the policy asserted to justify the government action.<sup>30</sup>

Perhaps it has too often been said, and it is too obvious, that theoretical perspectives are important for good lawyering. Yet we suspect that this basic fact may be too easily forgotten during this skills competency phase of legal education.

### *A Case for Teaching Theoretical Perspectives in the Context of Substantive Courses which Traditionally Emphasize Doctrinal Coverage: The Pervasive Method*

Teachers who believe that theoretical perspectives are important also find methods of bringing them into their courses. Other teachers find them less important and do not. The teaching of theory in law school is likely to be more challenging than ever in the next decade, in part because students come to law school with a very goal-oriented,

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30. For examples of the central role that characterization plays in principle based fundamental rights and principle based equal protection litigation see *United States v. O'Brien*, 391 U.S. 367 (1968) and *Maher v. Roe*, 432 U.S. 464 (1977). Compare *Cohen v. California*, 403 U.S. 15 (1971) with *Street v. New York*, 394 U.S. 576 (1969) and *Carey v. Population Services Int'l.*, 97 S. Ct. 2010 (1977). For equal protection cases see, *Craig v. Boren*, 429 U.S. 190 (1976); *Loving v. Virginia*, 388 U.S. 1 (1967); and compare, *Geduldig v. Aiello*, 417 U.S. 484 (1974), with *Mobile v. Bolden*, 446 U.S. 55 (1980).

practical mindset. They are concerned about jobs in a finite market; they are often in debt. These and other factors contribute to a lack of enthusiasm for theoretical or abstract discussions. As law teachers, we must demonstrate to students that a theoretical understanding is useful in the day-to-day decisionmaking of lawyers, who represent clients as well as make policy. An effective way to accomplish this is by teaching the theoretical perspective as part of a course which primarily focuses on legal doctrines.

Integration of perspective materials with traditional materials on common law and constitutional cases, statutes, and regulations enhances the student's appreciation for the value of a theoretical perspective. It also expands the student's knowledge and understanding of the cases, statutes, and regulations that are the focus of the discussion. Finally, it is likely to contribute to that lawyer's caring and sense of a broader obligation to the profession and society.

There are a few major casebooks which splice theoretical and primary material well, but, by and large, the law teacher who is interested in integrating theoretical materials must develop his or her own supplementary materials for a particular course. With the technology of word processing and electronic reproduction, supplementary materials can be produced quickly and inexpensively. The initial reproduction of excerpts of theoretical writings, either from books or secondary publications, and lines of cases, interpreting common law doctrine, the constitution, or statutes, and regulations, will involve a modest expenditure of time. Over the course of using the materials in class, specific questions can be developed which will become the focal point of class discussions as the materials "mature."

Courses in the area of public law, with an emphasis on rights against government, are prime candidates for philosophical and jurisprudential perspectives, and a great deal of good material is available.<sup>31</sup>

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31. There are several sets of published materials that do a good job of interfacing philosophical and jurisprudence materials with primary authority. *See, e.g.*, FEINBERG & GROSS, *PHILOSOPHY OF LAW* (1975); R. KIPNIS, *PHILOSOPHICAL ISSUES IN LAW* (1977); MORRIS, *FUNDAMENTAL RESPONSIBILITY* (1961); Several recent books are also useful: *See also* ELY, *DEMOCRACY AND DISTRUST* (1980); R. BERGER, *GOVERNMENT BY JUDICIARY* (1977); M. PERRY, *THE CONSTITUTION, THE COURTS AND HUMAN RIGHTS* (1982); D. RICHARDS, *MORAL CRITICISM OF LAW* (1977).

Professor Turkington has utilized supplementary materials to teach perspective components in courses on Constitutional Law and Privacy. A partial syllabus follows.

*A. Separation of Powers*

1. The Federalist, Madison, #47; Hamilton, #69.

## Courses that have a heavy statutory component and involve important

2. Justice Taft, *Ex Parte Grossman*, 267 U.S. 87, 119, 120 (1925).
  3. Younger, Congressional Investigations and Executive Secrecy: A Study in Separation of Powers, 20 U.P.H. L. Rev. 78 (1970).
  4. *Myers v. United States*, 272 U.S. 52 (1926). Justice Taft's "Static Pie" concept of Separation of Powers, Justice Brandeis "Blending and Diffusion" Concept of Separation of Powers.
  5. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Professor Perry on *Youngstown*.
  6. Introductory Note: Justice Taft's and Justice Brandeis' employment of *Marbury v. Madison* as precedent in *Myers*.
  7. The role of precedent and the principle of *stare decisis* in Constitutional interpretation. *Edelman v. Jordan*, 415 U.S. 651, (1974) (Justice Rhenquist). *Runyon v. McCrary*, 427 U.S. 160, 189 (1975) (Justice Stevens). Cardozo, The Nature of the Judicial Process 149 (1921).
- B. Introduction to Jurisprudential Foundations of Constitutional Law; Philosophies of the Role of the Court in Constitutional *Adjudication*.
1. Justice Harlan on Judicial Restraint and Public Action Suits, *Flash v. Cohen*, 392 U.S. at pp. 130-133 (1968).
  2. Justice Douglas on Judicial Activism and Public Action Suits, *Flash v. Cohen*, 392 U.S. at pp. 109-111 (1968).
  3. Justice Frankfurter on Judicial Restraint, *Youngstown v. Sawyer*, 343 U.S. at p. 594 (1952).
  4. Wright, the Role of the Supreme Court in a Democratic Society — Judicial Activism and Restraint, 54 Corn. L. Rev. 11 (1968).
  5. Contemporary Talk: Interpretive and Non-Interpretive Review.
  6. Professor Ely on: ELY, DEMOCRACY AND DISTRUST 1, 2 (1980).
  7. Professor Perry on: PERRY, THE CONSTITUTION, THE COURTS, AND HUMAN RIGHTS 10, 11 (1982).
  8. *Griswold v. Connecticut*, 381 U.S. 479 (1965).
- C. The Use of History in Interpreting Constitutional Text: Discovering the Intent of the Framers.
1. Justice Taney on: *Dred Scott v. Sanford*, 60 U.S. 393, 426 (1857). Justice Hughes, on *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U.S. 442-43 (1934).
  2. Bickel, the Original Understanding and the Segregation Decision, 69 Harv. L. Rev. 1 (1955).
  3. Curtis, A Better Theory of Legal Interpretation, 3 Vand. L. Rev. 407 (1950).
  4. Wofford, The Blinding Light: the Uses of History in Constitutional Adjudication, 3 U. Chi. L. Rev. 502 (1964).
- D. *Concepts of Fundamental Rights and Justice*
1. Supreme Court Justices and Moral Philosophers  
*On Rights*
    - a. The Justice, *Poe v. Ullman*, 367 U.S. 497, 539 (1961). Justice Harlan Dissenting.
    - b. The Philosopher, Feinberg, Social Philosophy, 31 (1973).
  - On Justice*

public law issues are ripe for developing supplementary sets of materials dealing with various perspectives and statutory construction in the legal process.<sup>32</sup> There is much that has been written from a very theoretical perspective about the meaning of language,<sup>33</sup> generally, and there is much that has been written in law reviews on statutory construction questions. Questions on statutory construction are also tied closely to questions of a more jurisprudential nature. The attitude that a court takes in interpreting language in a statute which is open-textured may well depend upon whether that particular court embraces any of the dominating schools of jurisprudence, legal realism, positivism, or natural law. Questions concerning the appropriate role of courts in a constitutional system and the relationship between the legislature and courts in respect to policy-making are also relevant considerations in statutory courses. Materials on history and sociology may work well in a course such as Contracts.<sup>34</sup>

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a. The Justices

1. *Strander v. West Virginia*, 100 U.S. 303, 308 (1879) (Justice Strong).
2. *Plessy v. Ferguson*, 163 U.S. 537, 559 (1895) (Justice Harlan).
3. *Regents of Univ. of California v. Bokke*, 438 U.S. 265 (1978) (Justices Powell and Douglas).
4. *Fullilove v. Klutznick*, 448 U.S. 448 (Chief Justice Burger).

b. The Philosophers

1. NICKEL, CLASSIFICATION BY RACE IN COMPENSATORY ETHICS 84 (1974).
2. NEWTON, ETHICS, REVERSE DISCRIMINATION AS UNJUSTIFIED 83 (1973).
3. THOMSON, PREFERENTIAL HIRING, PHILOSOPHY AND PUBLIC AFFAIRS 2 (1973).

32. The "unpublished" materials by Hart and Sachs, entitled *LEGAL PROCESS*, may still be the best source for perspectives on statutory construction.

33. The most recent and, perhaps, most useful example of the spate of literature that has been published on Interpretation is a two volume symposium in the *Southern California Law Review* devoted entirely to the subject. *See also Interpretation Symposium*, 58 S. CAL. L. REV. 1 (1985).

34. The Syllabus in this footnote was prepared by the late Professor Douglas Salem for an Introductory Course at Southwestern School of Law. Professor Turkington taught from the materials in 1978 at Southwestern and found them to be an effective fusing of historical- sociological perspectives with primary authority in the area of contracts law. Further refinement of the materials was prevented by Professor Salem's untimely death in 1979.

I. *Introduction* — Editorial Note Containing



In short, the varieties of supplementary perspective components that could be brought to law school courses are only limited by the lack of interest, imagination or time of the law teacher.

In this era of fiscal belt-tightening, the teaching of theoretical understandings in the context of the substantive course is not only peda-

A. Explanation of function and structure of section.

B. Brief excerpts from Holmes, *The Common Law* and Chief Justice Coke on the need to understand the historical context in which legal principles evolve in order to use them.

C. Brief excerpts from two classic historical treatises on the forms of action and pre-18th Century contract law.

D. Rehinder, *Status, Contract and the Welfare State*, 23 STAN. L. REV. 941 (1971).

## II. Eighteenth Century Contract Law — Equitable Conception of Contract

A. Horowitz, *The Historical Foundations of Modern Contract Law*, 87 Harv. L. Rev. 917 (1974) pp. 2212-22.

B. *Pyncheon v. Brewster*, Quincy's Rep. 224 (Mass. 1766).

C. *Waddill v. Chanberlayne*, Barradall's Rep. 45 (Va. 1735).

D. *Noble v. Smith*, Quincy's Rep. 254 (Mass. 1767).

E. *Flureau v. Thornhill*, 96 Eng. Rep. 635 (1776).

F. *Seymour v. Delancy*, 6 Johns Ch. 222 (N.Y. Ch. 1822).

## III. Nineteenth Century Contract Law — The Will Theory of Contract

A. Horowitz, *The Emergence of An Instrumental Conception of Law*.

B. Horowitz, *Historical Foundations*, *supra*, pp. 2222-31.

C. Restatement of Contracts, (1933), Introduction and section 81.

D. *Seymour v. Delancy*, 3 Cow. 445 (N.Y. 1824).

E. *Whitefield v. McLeod*, 2 Bay 380 (S.C. 1802).

F. *Seixas v. Wood*, 2 Caines (N.Y. 1804).

G. *Cooke v. Oxley*, 100 Eng. Rep. 785 (K.B. 1790).

H. *Dickenson v. Dodds*, 2 Ch. D. 463 (C.A. 1876).

I. *Shepard v. Hampton*, 16 U.S. 200 (1818).

## IV. Twentieth Century Contract Law — Balance of the Equitable and Will Theories — Return of Status

A. Childress & Spitz, *Status in the Law of Contract*, 47 N.Y.U. L. Rev. 1, 1-7 (1972).

B. *Drennan v. Star Paving Co.*, 51 C.2d 409 (1958).

C. *Goodman v. Dicker*, 169 F.2d 684 (D.C. Cir. 1948).

D. *Hoffman v. Red Owl Stores*, 133 N.W.2d 267 (Wis. 1965).

E. Restatement of Contracts, 2nd, section 90.

F. Uniform Commercial Code, §2-302.

G. *Campbell Soup Co. v. Wentz*, 172 F.2d 80 (3rd Cir. 1948).

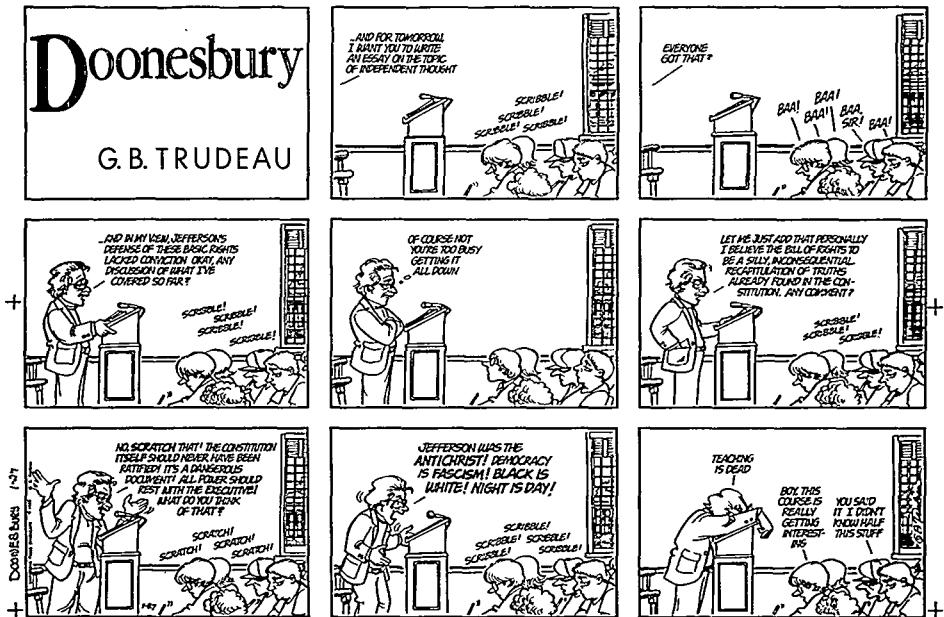
H. *American Home Improvement Co. v. MacIver*, 201 A.2d 886 (N.H. 1964).

I. *Williams v. Walker-Thomas Furniture*, 350 F.2d 445 (D.C. Cir. 1965).

J. *Weaver v. American Oil Co.*, 276 N.E.2d 144 (Ind. 1971).

K. Kessler, *Contracts of Adhesion — Some Thoughts About Freedom of Contract*, 43 Col. S. Rev. 629, 631-33, 637-38, 640-42.

gogically sound but is cost efficient in terms of faculty resources. Most importantly, it will contribute to the development of the caring, competent law professional which is the primary challenge in legal education in the next decade.



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